RECENT CASES

CARRIERS OF PASSENGERS—INSULT OF PASSENGER BY CONDUCTOR—ASSIGNMENT OF WHITE AND COLORED RACES TO SEPARATE COACHES.—MAY V. SHREVEPORT TRACTION CO., 53 So., 671 (LA.).—*Held,* that to apply the term "negro" to a white person is humiliating and insulting, and a suggestive question, such as, "Don't you belong over there?" addressed to a white person by the conductor of a street car, who points to the seats reserved for negroes is but little less so. In either case, and whether the language used be heard by others or not, an action in damages will lie against the carrier.

It is well settled that a carrier of passengers is as much bound to protect them from humiliation and insult as from physical injury. *Gillespie v. Brooklyn Heights Co.,* 178 N. Y., 347. But there is a conflict of authority as to whether or not it is injurious in itself to apply the term "negro" to a white person: Some courts have held that such a term is slanderous *per se; Flood v. News Co.,* 71 S. C., 112; while others hold that to enable the plaintiff to recover, special damage must be shown. *McDowell v. Bowles,* 8 Jones L. (N. C.), 184. In bringing such an action, the plaintiff must allege that he is a white person. *Wolfe v. Ga. R. & E. Co.,* 124 Ga., 693. A carrier has been held liable for the discomfort and humiliation resulting from its action in compelling a white woman and her children to ride in the coach occupied by colored passengers. *M., K. & T. R. R. Co. v. Ball,* 25 Tex. Civ. App., 500. It was held that a colored woman who was denied admission to the ladies' car and compelled to ride in the smoker with white men could recover damages from the carrier. *Gray v. Cin. So. Ry. Co.,* 11 Fed., 683. Where a conductor permitted an intoxicated white man to remain in the colored coach, and he insulted and maltreated a colored woman, the carrier was held liable. *Wood v. L. & N. R. R. Co.,* 101 Ky., 703. But where a white sheriff was not allowed to take a colored passenger into the white coach, but was compelled to accompany him into the colored coach, it was held that he could not recover. *L. & N. R. R. Co. v. Gatron,* 102 Ky., 323. Some courts hold that the carrier is liable only when the conductor does not exercise due care, or is insulting in addressing the passenger. *So. Ry. v. Thurman,* 121 Ky., 716. In other jurisdictions, it is said that the conductor acts at his peril and the peril of his employer. *In re Plessy,* 45 La. Ann., 80.

CRIMINAL LAW—DEFENSES—COMMAND OF SUPERIOR.—BUCHANAN V. STATE, 112 PAC., 32 (OKLA.).—*Held,* that the law of agency as applied in civil cases has no application in criminal cases, and no man can escape punishment when he participates in the commission of a crime upon the ground that he simply acted as agent for another.

It is well settled that the command of a principal will not justify the agent in committing a crime. *State v. Sutton,* 10 R. I., 159; *State v. Bryant,* 14 Mo., 340; *Commonwealth v. Drew,* 3 Cush. (Mass.), 279. Agency is no defense, even where the act is committed in the presence

and under control of the employer; *Commonwealth v. Hadley,* 11 Metc. (Mass.), 66; since the duty which every individual owes to the state is paramount to any obligation imposed on him by his voluntary service to another. *State v. Bell,* 5 Port. (Ala.), 365. The weight of authority is that an infant cannot justify the commission of a crime by the command or control of his parent. *People v. Richmond,* 29 Cal., 414; *Contra, State v. Rosenberg,* 162 Mo., 358. While some courts hold that a soldier is liable for acts committed by order of his superior; *Mitchell v. Harmony,* 13 How. (U. S.), 115; others hold that, inasmuch as he is bound to obey the orders, he should not be held liable; *Clark v. State,* 37 Ga., 191; the better rule seems to be that he can excuse himself by pleading only the lawful commands of a superior, whom he is bound to obey. *Commonwealth v. Blodgett,* 12 Metc. (Mass.), 56. At all events, it is admissible to extenuate the offense by showing that the act was committed in obedience to the command of a superior. *State v. Sparks,* 27 Tex., 627. The courts are agreed that the principal is criminally liable for acts done by the agent within his authority. *McKee v. State,* 111 Ind., 378; *Commonwealth v. Stevens,* 155 Mass., 291. Where the agent is guilty of crime, the employer is only an accessory; *Hately v. State,* 15 Ga., 346; but where the agent is innocent, the employer is guilty as principal. *Bishop v. State,* 30 Ala., 34; *Gregory v. State,* 26 Ohio St., 510. It has been held that the burden is on the master to prove that the act committed by the servant was not within his authority; *Rosenbaum v. State,* 24 Ind. App., 510; but the majority of the cases seem to hold that the burden is on the State to prove that the act was within the authority of the servant. *State v. Smith,* 10 R. I., 258. When a statute renders a proprietor absolutely responsible for certain offenses, the authority of the servant need not be shown. *Loeb v. State,* 75 Ga., 258.

CRIMINAL LAW—EVIDENCE—ADMISSIBILITY OF CONFESSIONS PROCURED THROUGH DURESS.—STATE V. MILLER, 111 PAC., 1053 (WASH.).—*Held,* that where accused charged with burglary was placed in a black cell to extract a confession from him, and the prosecuting attorney threatened him with prosecution for sundry crimes which would work cumulative sentences, and with other harsh treatment, alleged confessions of accused obtained by such means were obtained under duress, and evidence thereof was inadmissible against him.

All confessions in criminal actions are *prima facie* involuntary, and therefore inadmissible, and they can be rendered admissible only by showing that they are voluntary and not constrained. *Amos v. State,* 83 Ala., 1; *Corley v. State,* 50 Ark., 305. The reason for this rule is that involuntary confessions are probably untrue. *Redd v. State,* 68 Ala., 492. So a confession extorted by or obtained through the influence of threats or inducement is inadmissible. *People v. Smith,* 15 Cal., 408; *State v. Phelps,* 11 Vt., 116. But the temporal inducement must be held out by one in authority. *Com. v. Tuckerman,* 10 Gray (Mass.), 173. However, a confession is admissible if such inducement proceeds from a person not in authority over the prisoner. *Spears v. State,* 2 Ohio St., 583. So confessions to a prosecuting attorney are not incompetent, provided they